

STATE OF MINNESOTA  
IN COURT OF APPEALS

A22-1040



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Andrea M. Quarnstrom,

Relator,

vs.

Berkley Risk Administrators Company,  
LLC,

Respondent,

Department of Employment and Economic  
Development,

Respondent.

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**ORDER OPINION**

Department of Employment  
and Economic Development  
File No. 48497689-3

Considered and decided by Segal, Chief Judge; Gäitas, Judge; and Wheelock, Judge.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:**

1. Relator Andrea M. Quarnstrom seeks reversal of a decision by an unemployment-law judge (ULJ) that Quarnstrom was ineligible for unemployment benefits because she was discharged for employment misconduct. Respondent Minnesota Department of Employment and Economic Development (DEED) supports reversal. Respondent-employer Berkley Risk Administrators Company, LLC has not appeared in the appeal.

2. Quarnstrom worked as a field adjuster for Berkley until she was discharged for refusing to comply with Berkley's COVID-19 vaccination policy. Before her

discharge, Quarnstrom had sought a religious exemption from the policy. Berkley “approved” the exemption but notified Quarnstrom that it could not “accommodate” the exemption because her job required in-person contact with customers. Berkley terminated Quarnstrom’s employment effective February 1, 2022.

3. Quarnstrom was denied unemployment benefits and administratively appealed. At the hearing before the ULJ, Quarnstrom testified that she had refused to get a COVID-19 vaccination based on her religious beliefs. She testified that she is Christian and attends Cross Lake Evangelical Free Church every Sunday. She testified that she stopped receiving flu vaccinations in 1995 and that she also seeks to protect her body as a temple by abstaining from alcohol and any drugs (including aspirin) and by eating organically. But she also testified that she did not stop receiving flu vaccinations for religious reasons. And she testified that she had done research about the COVID-19 vaccine and that “there’s just a lot of things that have come out that have made me choose my decision.” Those things included “[t]he amount of death, the amount of adverse reactions people are having compared to any other vaccine that’s been available.” She testified that she did not consider the COVID-19 vaccine to be safe and effective.

4. Following the hearing, the ULJ issued a decision determining that Quarnstrom had committed employment misconduct by failing to comply with the vaccination mandate, that her refusal of the vaccine was not based on sincerely held religious beliefs, and that she was therefore ineligible for benefits. The ULJ found: “Quarnstrom does not have a sincere religious belief regarding her refusal to get vaccinated for COVID-19. Her refusal was based on personal reasons.” The ULJ further explained:

Quarnstrom was ultimately not fully credible that her refusal to get a vaccine for COVID-19 was based on sincerely held religious beliefs because they were inconsistent and in conflict with other things Quarnstrom said in the hearing: 1) her refusal does not rely on any specific passage or scripture from the Bible, 2) no religious leader at Crosslake Evangelical Church has advised the congregation, or Quarnstrom, to not get vaccinated for COVID-19, 3) she is aware of other members of her church who have been vaccinated for COVID-19, 4) her objection to the seasonal flu vaccine is not based on religious beliefs or practices but instead on an overall sense that she is in good health and does not need to be vaccinated, 5) her approach to maintaining her body as a temple is unique as to her and that others who believe their body is a temple could come to the conclusion that getting vaccinated for COVID-19 is the right thing for them to do (i.e., they can “do things their own way”), and 6) she believes the COVID-19 vaccines are unsafe and ineffective (based on, as she said, “the amount of death and adverse reactions” the vaccines have caused which she learned from online research); Quarnstrom gave the example that she knew of people who have been “triple vaccinated,” who still caught COVID-19 and that the vaccines’ effective rate was much lower than that of the smallpox vaccine.

Quarnstrom requested reconsideration, and the ULJ affirmed the decision.

6. We may affirm the ULJ’s decision or remand for further proceedings, or we may reverse or modify the ULJ’s decision “if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are,” as relevant here, “in violation of constitutional provisions” or “unsupported by substantial evidence in view of the hearing record as submitted.” Minn. Stat. § 268.105, subd. 7(d) (2022).

8. An applicant is ineligible for unemployment benefits if she was discharged because of employment misconduct. Minn. Stat. § 268.095, subd. 4(1) (2022). Employment misconduct is defined as “any intentional, negligent, or indifferent conduct,

on the job or off the job, that is a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee.” *Id.*, subd. 6(a) (2022). “[A]n employee’s decision to violate knowingly a reasonable policy of the employer is misconduct.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 806 (Minn. 2002). But even when the definition of misconduct is satisfied, a decision denying unemployment benefits may be subject to reversal if it violates constitutional rights. Minn. Stat. § 268.105, subd. 7(d)(1).

9. A decision denying unemployment benefits infringes an applicant’s free-exercise rights under the First Amendment if the applicant was forced to choose between her sincerely held religious beliefs and her employment. *See Frazee v. Ill. Dep’t of Emp. Sec.*, 489 U.S. 829, 832 (1989); *see also Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981) (explaining that “a person may not be compelled to choose between the exercise of a First Amendment right and participation in an otherwise available public program”). Such an infringement is subject to strict scrutiny and thus can only be sustained upon demonstration that it is the least-restrictive means to meet a compelling government interest. *Thomas*, 450 U.S. at 718.

10. The issue of whether employment misconduct is based on sincerely held religious beliefs is a fact issue. *See id.* at 716 (instructing that the “function of a reviewing court in this context is to determine whether there was an appropriate finding that petitioner terminated his work because of an honest conviction that such work was forbidden by his religion”); *see also In re Welfare of T.K.*, 475 N.W.2d 88, 91 (Minn. App. 1991) (reviewing for clear error district court finding that religious belief was sincerely held). The ULJ’s

factual findings should not be disturbed if the evidence in the record “reasonably tends to sustain those findings.” *Schmidgall*, 644 N.W.2d at 804.

11. The ULJ found that Quarnstrom’s reasons for refusing the COVID-19 vaccine were personal rather than religious, but some of the ULJ’s reasoning appears to be based on a misapprehension about the nature of free-exercise rights. The ULJ reasoned that Quarnstrom’s reasons for refusing the COVID-19 vaccine were not based on sincerely held religious beliefs because she did not cite to particular passages in the Bible, had not been instructed by a religious advisor to refuse the vaccine, and conceded that other members of her congregation could, consistent with their faith, choose to get a vaccine. But “the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect.” *Thomas*, 450 U.S. at 715-16; *see also Frazee*, 489 U.S. at 834-35 (“Frazee’s conviction was recognized as religious but found to be inadequate because it was not claimed to represent a tenet of a religious organization of which he was a member. That ground for decision was clearly erroneous.”). The ULJ erred by relying on the variability of beliefs within Quarnstrom’s congregation as a basis for finding that she was not motivated by sincerely held religious beliefs.

12. Other parts of the ULJ’s reasoning are based on permissible evaluations of Quarnstrom’s credibility. *See Frazee*, 489 U.S. at 833 (“States are clearly entitled to assure themselves that there is an ample predicate for invoking the Free Exercise Clause.”). The ULJ found that Quarnstrom’s objection to the seasonal flu vaccine is not based on religious beliefs or practices but instead on an overall sense that she is in good health and does not need to be vaccinated and that she believes the COVID-19 vaccines are unsafe and

ineffective. These findings are similar to those made by ULJs in cases where we have affirmed the denial of unemployment benefits based on vaccine refusal in violation of employer policies.<sup>1</sup> See *Logue v. Olympus Am., Inc.*, No. A22-0282, 2022 WL 3581809, at \*2 (Minn. App. Aug. 22, 2022) (concluding ULJ’s finding was supported by substantial evidence because relator “directly questioned the safety of the vaccines” and stated that she was unwilling to take vaccine “right now” but intended to reevaluate her decision based on subsequent studies); *Potter v. St. Joseph’s Med. Ctr.*, No. A18-0736, 2018 WL 6729836, at \*4 (Minn. App. Dec. 24, 2018) (concluding ULJ’s finding was supported by substantial evidence because relator testified to receiving other vaccinations that she perceived to be effective and testified that “if the flu shot was scientifically proven to be effective she ‘probably would’ receive it”).

13. Because the ULJ’s decision is based at least in part on an erroneous legal analysis regarding free-exercise rights, we conclude that it is appropriate to remand this matter to the ULJ for a revised decision consistent with applicable precedent on this issue. The ULJ in its discretion may reopen the record.

**IT IS HEREBY ORDERED:**

1. This matter is remanded to the ULJ for a revised decision.

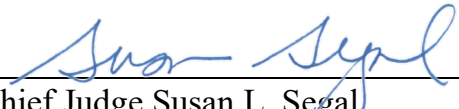
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<sup>1</sup> The opinions are nonprecedential pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c) (2022).

2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: 2/22/23

**BY THE COURT**

  
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Chief Judge Susan L. Segal